

# EXHIBIT 6

To  
Memorandum In Support of TriPath Imaging, Inc.'s Motion to Exclude  
Defenses Based on Cytoc's CDS-1000

Civil Action No. 03-11142 [DPW] - Lead Case

Filed May 5, 2005

**WILMER CUTLER PICKERING  
HALE AND DORR<sup>LLP</sup>**

March 16, 2005

Patrick M. Callahan

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patrick.callahan@wilmerhale.com**By Facsimile**Charles A. Burke, Esq.  
Womble Carlyle Sandridge & Rice PLLC  
One West Fourth Street  
Winston-Salem, NC 27101Re: Cytoc Corporation v. TriPath Imaging, Inc. No. 03-11142 (DPW) (D. Mass.)

Dear Charles:

In the March 7th expert report of Dr. John C. Russ, TriPath asserts -- for the first time -- that the ThinPrep Imaging System infringes claim 19 of the '377 Patent. TriPath had *never* previously identified Claim 19 in its answers or supplemental answers to Cytoc's interrogatories, which specifically called for such information. See TriPath's December 15, 2003 Answer and Objections to Interrogatory No. 4 (identifying claims 1 and 16 of the '377 Patent); TriPath's September 27, 2004 Supplemental Answer and Objections to Interrogatory No. 4 (identifying claims 1-4, 6-11, 13-16, 18, 20, 22-26 of the '377 Patent).

The rules preclude TriPath from asserting -- after the close of fact discovery -- claims that were not disclosed in its answers to interrogatories. See, e.g., Fed. R. Civ. P. 26(e). Further, there appears to be no justification for TriPath's failure in this regard, since the documents on which Dr. Russ relies for his infringement opinion were among the first produced in this case -- *over a year ago*. See Cytoc January 30, 2004 Letter (producing, *inter alia*, C0019683 and C0025278-79). Beyond its failure to comply with the Federal Rules, TriPath's untimely attempt to assert Claim 19 has caused substantial prejudice to Cytoc because Cytoc was unable to address this claim in its own expert submissions, which were served on the same day we received Dr. Russ's report.

BALTIMORE BERLIN BOSTON BRUSSELS LONDON MUNICH  
NEW YORK NORTHERN VIRGINIA OXFORD PRINCETON WALTHAM WASHINGTON

Charles A. Burke, Esq.  
March 16, 2005  
Page 2

In light of the above, we ask that you immediately withdraw Claim 19 of the '377 Patent. If you refuse to do so, we will move to preclude TriPath from offering evidence of infringement of that claim.

Very truly yours,



Patrick M. Callahan

PMC/jlm

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March 22, 2005

**By Facsimile**

Charles A. Burke, Esq.  
Womble Carlyle Sandridge & Rice PLLC  
One West Fourth Street  
Winston-Salem, NC 27101

Re: Cytoc Corporation v. TriPath Imaging, Inc. No. 03-11142 (DPW) (D. Mass.)

Dear Charles:

I write to follow up on my March 16th letter regarding the expert report of Dr. John Russ.

In that letter, we asked TriPath to withdraw its claim of infringement with respect to Claim 19 of the '377 Patent due to TriPath's failure to assert that claim until after the close of fact discovery and after Cytoc had submitted its own expert reports. We have not yet received a response. If we do not hear from you by the end of business tomorrow, we will assume that you do not intend to withdraw that claim, and we will take the issue up with the Court.

Very truly yours,



Patrick M. Callahan

PMC/jlm

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March 23, 2005

***Via Facsimile & U.S. Mail***

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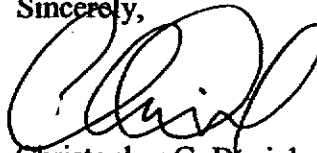
Re: *Cytyc Corporation v. TriPath Imaging, Inc.*  
Civil Action No. 03-11142 (DPW)(D. Mass)

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Dear Patrick:

We have examined the issue raised in your March 16, 2005 letter regarding Claim 19 of the '377 Patent. This confirms that TriPath's assertion of Claim 19 will be withdrawn.

Sincerely,



Christopher G. Daniel